IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 37 OF 2005

Tetrapak India Private Limited ...Applicant

Versus

Enkay Texofood Industries Limited ...Respondent

Mr. Rahul Chitnis instructed by M/s. Crawford Bayley & Co. for the Applicant.

CORAM: DALVEER BHANDARI, C.J.
DATE: 12TH AUGUST, 2005

P.C.

1. Clauses 15.2 and 15.3 (part) of the Agreement read as under:-

> "15.2. If at any time should there by any question, dispute or difference between ETIL (the respondent herein) and TPIL (the applicant herein) in respect of any matter arising out of or in relation to this Agreement, either party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall, if not settled amicably .. , be referred to the arbitration of a single arbitrator whom the parties may agree upon, otherwise to

two arbitrators, one to be nominated by each party.

15.3. The arbitrator/s shall, before proceeding with the reference, nominate an umpire to act in case of disagreement. The award of the arbitrator/s shall be final and binding on the parties and be accepted by them...."

2. According to the said clauses, any question, dispute or difference be referred to the arbitration of a single arbitrator whom the parties may agree upon, otherwise to two arbitrators, one to be nominated by each party. The arbitrators shall, before proceeding with the reference, nominate an umpire to act in case of disagreement.

3. Notice has been given to the respondent. However, the respondent has not appeared. Pursuant to the notice issued again by the order of this Court dated 19th July, 2005, the applicant was directed to serve the respondent. The respondent has again been served pursuant to the fresh notice. The applicant has filed the affidavit of service Shashikant P. Ahire, a Despatch Peon, dated 25th July,

2005, according to which, the respondent has again been served. Despite service, the respondent does not appear.

4. In the above view of the matter, in the interest of justice, I deem it appropriate to request the Hon'ble Mr. Justice M.H. Kania, a former Chief Justice of India, to accept this arbitration. His Lordship would be at liberty to fix his own fees.

5. This application is accordingly disposed of.

CHIEF JUSTICE